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Mail Stop: Petition
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Or faxed to: 571.273.8300

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE PATENT APPLICATION OF JOHN CHOATE

APPLICATION No: 10/780,476
FILED: FEBRUARY 16, 2004

CONFIRMATION No: 1542
ART UNIT: 3736
EXAMINER: J. HOEKSTRA

FOR: APPARATUS THAT IMPROVES DISCOVERY OF CANCER
MASS, AND REDUCES INFLAMMATION – ONSET OF SYMPTOMS OF
CARPAL TUNNEL SYNDROME OR ARTHRITIS – TACTILE DEFICIT OF
FINGERS, AND INCREASE DISCOVERY OF FOREIGN MASS IN BREAST
AND SELF EXAMINATIONS, ETC.

Petition for Revival of abandoned application 37 CFR 1.137

1. I previously filed a petition under 1.183, mailed on April 12, 2007 from Arlington, but not stamped by USPTO received until April 18, 2007, which was dismissed on August 8, 2007; whereupon a notice of abandonment was mailed to me on September 12, 2007, then I filed a petition under 1.181 on October 1, 2007, which was dismissed on Oct 26, 2007, to which I Petitioned To Withdraw Holding of Abandonment on December 14, 2007, which reply was denied on February 19, 2008, and which reply directed the filing of this Revival of abandoned application pursuant to 1.137.

2. I incorporate all previous petitions by reference.

3. I never received an office action of October 13, 2008. I tried to forward my mail from the Old Greenwich Connecticut Post Office (i.e. I paid for the box, gave notice to forward to the Post Office), which forwarding failed. I notified the USPTO of my change of address in a response filed a few weeks before the October 13, 2008 office action, but this was ignored in the Oct 13th 2008 office action. I knew nothing of the October 2008 office action until it was discovered on or about April 7th, 2007 from the Public PAIR. My response took 5 days to research, draft and print, and was mailed on April 12th 2007, wherein I mailed the letter, certified mail, as noted above, paying about \$500 for extension of time, but failed to "include" the certificate of mailing statement, until the October and December 2007 replies, filed nunc pro tunc. The April 12th 2007 response was sent by certified mail, but not picked up for 4 more days, by which time I am informed it was deemed late and declared it abandoned in September 2007.

4. 37 CFR 1.137 Revival of abandoned application, terminated reexamination proceeding, or lapsed patent. (a) *Unavoidable*. If the delay in reply by applicant or patent owner was unavoidable, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination proceeding terminated under §§ 1.550(d) or 1.957(b) or (c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by: (1) The reply required to the outstanding Office action or notice,

09/22/2009 CKHLOK 00000003 10780476

01 FC:2452

255.00 OP

Adjustment date: 09/22/2009 CKHLOK
03/11/2008 DLINDSEY 00000003 10780476
01 FC:1599 -255.00 OP

unless previously filed; (2) The petition fee as set forth in § 1.17(l); (l) For filing a petition for the revival of an unavoidably abandoned application under 35 U.S.C. 111, 133, 304, or 371, ***: By a small entity (§ 1.27(a)) \$250.00 *** (3) A showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

The delay was unavoidable. I previously submitted the extension fees, and the certified mail receipt of the US Post Office, which satisfied the requirements. The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 1.137 paragraph was unavoidable.

5. As I mailed my reply of April 12, 2007 from Arlington Virginia, I had a reasonable basis to expect the response to be delivered the next day, April 13, 2007, in Alexandria to the Post Office, about 8 miles away. It may have been so delivered, although not stamped in by the USPTO until Monday April 16th.

6. The response [April 12, 2007] has been copied and filed on the PAIR as of 4-16-2007, including Amendment, Specification, abstract, claims, and extension of time form and fee. At that time I filed a petition to waive fee, with an appropriate fee, which was denied on 8-8-2007. As of this date the petition to waive fee has not had a reply, of which I am aware. If I can get any money back, I would not turn it down.

7. I certify on February 27, 2008, I ordered the check for fees of \$255 for this Petition, to be mailed by first class postage prepaid mail. Signed John Choate *John Choate*

8. I Certify I am faxing this petition and supporting documents to Mail Stop: Petition Commissioner For Patents [P.O. Box 1450 Alexandria, VA 22313-1450] Or faxed to: 571.273.8300 this date.

JOHN CHOATE, COPYRIGHT 2008

I CERTIFY I FAXED THIS PETITION AS DESCRIBED. JOHN CHOATE

PO BOX 9949, ARLINGTON VA 22219-9949

703-241-2343

MARCH 3, 2008, *John Choate*

FEES: SMALL ENTITY \$255.00 BY SEPARATE MAIL WRAPPER.

ⁱ Certified mail is accepted by the USPTO in 37 CFR 104.12(a), TMEP 1711, TMEP 1800. But in other cases it is not. <http://www.patentbarbri.com/download/pdf/GRBJune03.pdf> Do Not Confuse with the U.S. Postal Service Certified Mail Procedure: A **number of individuals** submit documents with the U.S. Postal Service using only that Service's **certified mail** procedure. The Postal Service's **certified mail** procedure does not satisfy the provisions of 37 CFR § 1.8. Applications and other documents filed using the U.S. Postal Service **certified mail** procedure do not obtain the benefits of 37 CFR § 1.8. In those instances the documents will be treated as being filed on the date the documents are received at the USPTO. Page 14.

Clearly a number of individuals, not just me, have on occasion been confused by the distinction between certified mail and certificate of mailing, or the USPTO would not have taken the time to write and print the above caution. The next consideration is whether placing this warning in the non prominent middle at page 14 was really useful guidance.